

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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CLERKS OFFICE

2004 JUL -6 P 4:20

ZONEPERFECT NUTRITION  
COMPANY,

Plaintiff and Counterclaim Defendant

v.

HERSHEY FOODS CORPORATION,  
HERSHEY CHOCOLATE &  
CONFECTIONERY CORPORATION,  
DR. BARRY D. SEARS, and  
ZONE LABS, INC.,

Defendants and Counterclaim Plaintiffs

U.S. DISTRICT COURT  
DISTRICT OF MASS.

CIVIL ACTION NO: 04-10760 RGS

**AFFIDAVIT OF SCOTT C. LANE**

I, Scott C. Lane, being duly sworn, do hereby depose and say:

1. I served as a food consultant to Eicotech Corporation later ZonePerfect Nutrition Company. I have an Associate Degree in Occupational Studies from the Culinary Institute of America and attended one of the leading culinary schools in Europe, Le Cordon Bleu in Paris, France. I have an Associate degree in food service management from Northern Essex College, a Bachelor of Science degree in food and natural resources from the University of Massachusetts at Amherst, a Bachelor of Science degree in liberal arts from Franklin Pierce College, a Masters degree in Business from Rivier College in New Hampshire and a Masters in Liberal Arts from Harvard University. I was responsible for creating the recipes in Dr. Sears' books Mastering The Zone and ZonePerfect Meals In Minutes. This affidavit is based upon my own personal knowledge.

2. When I originally began my work with Eicotech, I had retained Ms. Denise Kelly, RD and Dr. Woodrow Monte to assist Dr. Barry Sears and me in developing the first generation ZonePerfect bar. This first generation bar was an "extruded bar," which differs substantially from the crunch bar.
3. In 1998, I was approached by Chris Baker, the CEO of Eicotech, and asked to create four flavor profiles for new nutrition bars Eicotech contemplated developing. Creating flavor profiles involves researching what type of bar flavors will be accepted by the public. Flavor profiles are not ingredient listings and do not contemplate the ultimate ingredients which will end up in the product. Dr. Sears approved of the flavor profiles I created which included chocolate raspberry, apple cinnamon, strawberry yogurt and fruit crunch. He was not presented with any ingredient listings or formulae as no ingredient listings or formulae existed at the time the profiles were created.
4. I provided the four new flavor profiles to Mr. Baker who thanked me and told me he would get back to me. I later learned that Mr. Baker took the flavor profiles and developed the ZonePerfect crunch bars. Some time thereafter, I received a phone call from Barry Sears. He told me that he had signed off on nutritional facts for the new bars but hadn't seen the ingredient listings for the bars. Barry told me he heard that the artwork for the bar packaging had been set and production had begun. Dr. Sears asked me how this could possibly be happening without his approval of the bars. I explained to Dr. Sears that I knew nothing about the production of the new bars and had nothing to do with their development. Dr. Sears expressed shock that I was not involved. In the past, Dr.

Sears had relied on me to let him know the status of certain development projects. He told me that he had been led to believe that I was working on the development of the bars. I told him that such was not the case. We then decided to meet in person so we could talk about it further.

5. I later went to Dr. Sears' office in Marblehead for our meeting. The meeting took place in February, 1999. I arrived at the office at approximately 4:30 p.m. In the time between our phone call and the meeting, Dr. Sears told me he had finally seen the ingredient listing and had one or two of the new bar flavors. He was very unhappy with the crunch bar ingredients and expressed his frustration to me about the fact that his approval had not been sought. He showed me the ingredient listings which I had never seen before. I was shocked and appalled with what I saw.
6. At about 5:15, Doug Sears received a phone call from Chris Baker indicating that he was having a meeting in Beverly at Eicotech's headquarters and asked us to come to the meeting.
7. We arrived in Beverly between 5:30 and 5:45. I exchanged pleasantries with Terry Guerin, ZonePerfect's receptionist and went with Doug and Barry to Dr. Paul Kahl's office. Dr. Kahl had all the bars and the packaging for the new bars in his office. We all collectively said to one another "have you seen the ingredient listings?" We began discussing the problems with the ingredients including the corn syrup and beet color. I tasted the strawberry yogurt bar and remarked that tasted too sweet. We then spoke about initial comments ZonePerfect was getting about the new bars not working. We specifically

discussed results Dr. Espy had reported back to Dr. Sears about the bars not working. We discussed the fact that the glycemic index on the bars was likely off the charts. Dr. Kahl remarked that a Snickers bar would work better than the crunch bars.

8. We then went into a conference room where the ZonePerfect employee were waiting for a meeting to begin. Amanda Libby was present along with members of the customer service department and other company employees. I stood in the doorway with Dr. Kahl. Also present were Doug Sears, Barry Sears and Paul Pruett. There may have been other individuals present. The meeting began late because Chris Baker was not on time.
9. Paul Pruett began the meeting by introducing Barry and me, along with Chris Baker. Mr. Pruett began handing out trinkets and other certificates to certain company employees. He displayed the new Quick Start Kits and explained that the new kits had the new bars. He then asked Barry to say a few words. Barry said that the crunch bars represented the next generation of ZonePerfect bars based on the flavor profile that I had developed. Barry said the bars "weren't perfect" and were "a work in progress." Dr. Sears certainly didn't endorse the products. He said that the bars were, in essence, a prototype.
10. Next, Chris Baker introduced me as the nutritional expert who developed the new flavor profiles to talk about the new products. I was shocked and completely unprepared. I remember telling those in attendance that the marketing research and new flavor profile were what the public was looking for. The staff then began asking questions of me. Specifically, I was asked whether I would be producing


an ingredient listing definition sheet for the new bars. I had prepared a definition sheet for the original bars. The definition sheet is useful for technical support so that questions about certain product can easily be answered. I diplomatically said that the decision was up to Chris Baker and the company. The nature of the questioning from the employees made me believe that they thought I was involved in the development of the product, which I was not.

11. Mr. Baker continued to speak about what a great job everyone was doing, that the company was growing and other how great things were about to happen at ZonePerfect.
12. After the meeting, I again met with Dr. Kahl, Barry and Doug. We all expressed our anger and frustration with Chris Baker and the way he was conducting business.
13. I was not involved in the development of the crunch bars other than creating the formula profile. I was never shown any ingredient listings before the bar was released to the public. To my knowledge, Dr. Sears was not involved in the development of the crunch bar and was never shown any ingredient listing or product formulation before the bars were sold to the public.
14. I then spoke to Chris Baker by phone and expressed my anger and frustration at what had transpired. During the call, Chris Baker stated to me the following: "I control this company, I control the Board of Directors. Barry Sears will do what I want him to do. I put \$500,000 of my own money in this company and when I sell it in five or six years there are going to be a lot more zeros next to those

numbers." He went on to explain to me that he controlled the voting rights and stock of the company, something I knew nothing about.

15. In the next few months, I had several meetings with Barry and Doug Sears in Marblehead, Massachusetts. We discussed, among other things, the reformulation of the new bars and what needed to be done to make them Zone compliant. I also spoke with Paul Shaker and Joe Pizzo at Sweet Productions, the company manufacturing the crunch bars, about the reformulation of the crunch bars and was consistently told that everything had to go through Chris Baker. To my knowledge, nothing ever came out of our attempts to reformulate the crunch bars.
16. I note in closing that I have not spoken with or seen Dr. Sears in the last year.

UNDER THE PAINS AND PENALTIES OF PERJURY this 2nd of July, 2004.

  
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Scott C. Lane